

UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Robert McLellan, et. al.
Application: FREEZE AND HEAT FOOD PREPORTIONING BAG
Serial No.: 10/796,725
Filing Date: March 9, 2004
Examiner: Cassandra Hope Davis
Art Unit: 3611
Conf. No.: 1771
Case No.: 0299/01892

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Mail Stop Amendment
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37 C.F.R. 1.132 Affidavit of the Co-Inventor Riki Combs

I, Ricki Combs, declare that I am a co-inventor of the above-identified patent application and I further state the following:

1. I have more than ten years of experience in the field of food handling products, with a principle emphasis on plastic bags. Since 1998, I have worked as a product development and marketing expert at Handgards, Inc. of El Paso, Texas. My primary area of responsibility is the design of products for use by large-scale food manufacturers.
2. Over the course of my employment, I worked at several areas at Handgards, Inc. including direct customer interaction with a focus on solving problems encountered by end-users of our products. One of my core responsibilities is to analyze customer requirements for new products and then design products to meet specific needs of major national and regional accounts.

3. Given my years of experience and present position I am highly familiar with the products sold to food handling clients. Also, as a joint inventor, I have first-person knowledge of the facts related to the instant invention, having conceived the ideas and features that are the subject of the presently-pending claims.

4. I have studied the July 9, 2008 Official Action in the above identified matter. I understand that the instant invention is being rejected because of the Huseman patent.

5. The present invention is a food storage bag, the sides of which contain holes with flaps. The bag facilitates both heating and freezing of the contents of the bag without the need for removal of the food from the bag. During freezing, the flaps are substantially closed such that the food held within the bags is not subject to excessive dehydration, does not come in contact with frost, and does not directly contact the atmosphere of the freezer. When the bag and its contents are heated, the vents are pushed open, thereby allowing heated air to escape, while allowing a minimal amount of the external environment to enter the bag.

6. The slits also ensure that the food remains substantially physically contained within the bag even during heating of the bag, and its contents, in high-temperature environments.

7. If the bag contained holes in place of the slits, the food contained by such bags would lose more of its moisture during freezing. Such dehydration during freezing alters the physical structure of the food and results in so-called "freezer burn." Prior art bags that use holes for venting result in freezer burn and are therefore not used in freezing applications.

8. Further, if the bag contained holes in place of the slits, food would become contaminated and would spill out of the bags during heating. Heating of these bags involves, for example, boiling the bag in water or brine. If the bag were to contain holes, the bath would contaminate the food to a much greater extent than it does with the semi-circular slits. The slits function as a means to keep some of the surrounding liquid away from the food. The vents open outwardly inasmuch as the heating of the contents of the bags releases hot gasses from inside of the bag which then force the vents open. This outward position of the slits, combined with evacuation of heated fluid from the inside of the bag through the slits, stymies inward flow of the fluid comprising the bath.

9. In designing the instant bags, Handgards, Inc. researched and experimented with a number of alternate designs to facilitate venting during heating. The simplest vent to use is a hole given that a hole can be punched into the bag film with minimal effort. However, bags with holes suffer from the shortcomings described above. As such, Handgards research and development staff tried several alternatives, eventually settling on semi-circular slits as vents. The semi-circular slits are used because of the benefits derived from their application, even though cutting slits requires calibrated tools and additional quality control steps.

10. Therefore, it is my expert opinion that the use of holes instead of slits would defeat the stated purpose of the instant invention.

11. Prior to developing this bag design, there were no suitable freeze and heat bags available on the market. Customers relied on Handgards to research and develop a bag design that would allow the bag to be taken directly from the freezer to heating. The final result of the research efforts was the instant invention.

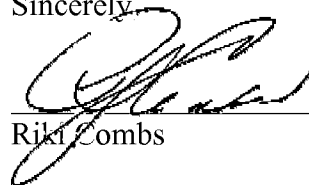
12. Further, the bag has enjoyed considerable commercial success in a highly competitive field with many market participants. In 2008, the bag sales are over 63,000 cases, totaling more than \$1.1 million in sales.

13. Handgards, Inc. does not heavily advertise this product. While sales of this product have increased dramatically since its introduction, Handgards, Inc. spends an analogous amount on advertising of this product as is spent on other product lines. Sales of other products have not increased in the same dramatic fashion. For example, only 12,450 cases of color tinted bags were sold in 2008. In summary, the features of this bag (instead of advertising), have resulted in significant sales to customers whose need for such a bag was not fulfilled by any of the competitors' products.

14. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

November 10, 2008
Date

Sincerely,



Riki Combs